

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RECEIPT # 16605
280.00

DAVID L. FISH, JR.,

Plaintiff,

v.

MARINE BIOLOGICAL LABORATORY

Defendant.

Civ. A. No. 8-4-05

05-11C19

Referred to MJ Leo T Sordani

NOTICE OF REMOVAL

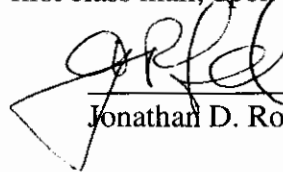
PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendant Marine Biological Laboratory ("Defendant") hereby removes the action entitled *David L. Fish, Jr. v. Marine Biological Laboratory*, Civil Action Number 05-00382, pending in the Barnstable County Superior Court Department of the Trial Court in the Commonwealth of Massachusetts (the "State Court Action") to the United States District Court for the District of Massachusetts. This Court has jurisdiction pursuant to 28 U.S.C. §1331, because Plaintiff's Complaint asserts federal claims for violation of the Federal Equal Pay Act ("FEPA") and Title VII of the Civil Rights Act of 1964 ("Title VII").

As grounds for removal, Defendant states the following:

1. On July 12, 2005, Plaintiff David L. Fish, Jr. ("Plaintiff") filed a Complaint in the State Court Action alleging gender discrimination in employment based on compensation differentials. A true and correct copy of the Complaint and Summons are attached hereto collectively as Exhibit 1.

CERTIFICATE OF SERVICE

I, Jonathan D. Rosenfeld hereby certify that on August 4, 2005, I caused a copy of the foregoing Notice of Removal to be served, by first class mail, upon plaintiff, David L. Fish, Jr., 63 Harriett Road, E. Falmouth, MA 02536.



Jonathan D. Rosenfeld

Commonwealth of Massachusetts
Barnstable Superior Court

David L. Fish Jr.

v.

Civil Action

No. 05-382

Marine Biological Laboratory

Complaint

Parties

1. The plaintiff is a resident of 63 Harriette Road East Falmouth, Barnstable County, Massachusetts and a citizen of the United States. The plaintiff has been employed by the defendant as a Watchperson since June 19, 1988.
2. The defendant is a private, non-profit research and educational institution located at 7 MBL Street Woods Hole, Barnstable County, Massachusetts. The defendant currently employs a year-round staff of more than 275 scientists and support staff.

Jurisdiction

3. This court has jurisdiction over this matter pursuant to the Equal Pay Act of 1963, as amended, Title VII of the Civil Rights Act of 1964, as amended, and the applicable laws of the Commonwealth of Massachusetts.

Facts

4. On January 25, 2004, the plaintiff complained to Jane MacNeil, the defendant's EEO Coordinator, of what the plaintiff believed to be a pay disparity. More specifically, the plaintiff complained that the Watchpersons (all male) working under Mary Beckwith's supervision on the Swope Office shift are paid at a lower Grade 6 pay rate while the Front Office Assistants (all female) are paid at a higher Grade 7 pay rate, even though both are performing similar (and nearly identical), as well as substantially equal positions.

5. On January 28, 2004, the plaintiff complained to Jane MacNeil, the defendant's EEO Coordinator, that differences between the work performed by the Watchpersons and the Front Office Assistants within the Swope Office were the result of glass ceiling type practices instituted by Mary Beckwith. The plaintiff complained that Mary Beckwith discriminatorily denied the opportunity for the male Watchpersons to receive the same training that the female Front Office Assistants have received and has discriminatorily denied the male Watchpersons the opportunity to assume the same responsibilities borne by the female Front Office Assistants.
6. On February 10, 2004, Jane MacNeil sent the plaintiff a letter and informed the plaintiff that there was a difference in work assignments, level of effort, and responsibility required of the Watchpersons versus the Front Office Assistants which was the basis for the difference in pay. The plaintiff does not agree with this. The Watchpersons perform nearly the same duties as the Front Office Assistants, with the exception of daily audits, data entry, and running reports. Moreover, Mary Beckwith has denied the male Watchpersons the same training given to the Front Office Assistants that would enable them to do these tasks. Additionally, Mary Beckwith's discriminatory procedures for assigning work are also limiting the plaintiff's opportunity to receive the higher Grade 7 Front Office Assistant pay rate.
7. Since making the complaint to Jane MacNeil, the plaintiff has been retaliated against for making the complaint by experiencing a reduction in overtime hours that are assigned by Mary Beckwith, with most of the overtime being given to the female Front Office Assistants and other female workers that work under Mary Beckwith's supervision in the Swope Office.
8. On January 4, 2005, the plaintiff made a Charge of Discrimination against the defendant to the Equal Employment Opportunity Commission.
9. On April 15, 2005., the Equal Employment Opportunity Commission mailed the plaintiff a Notice of Dismissal and Right to Sue
10. The plaintiff still believes that he is being discriminated against by Mary Beckwith because of his sex, male, and retaliated against for his complaints of what he feels are discriminatory practices. The plaintiff therefore charges the defendant with violating the Equal Pay Act of 1963, as amended, Title VII of the Civil rights Act of 1964, as amended, and the applicable laws of the Commonwealth of Massachusetts.

Relief

Wherefore, the defendant has intentionally engaged in the unlawful employment practices charged in the plaintiff's complaint, the plaintiff requests that the court enjoin the defendant from engaging in such unlawful employment practices and order such affirmative action as the court deems appropriate.

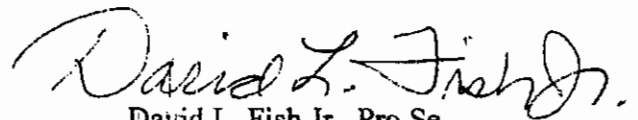
Wherefore, the defendant's intentional unlawful employment practices have caused the plaintiff to lose wages, overtime, and retirement benefits, the plaintiff requests a judgment for back pay against the defendant for lost wages, overtime, and retirement benefits in the amount of \$3,690.

Wherefore, the defendant's agent, Mary Beckwith, has retaliated against the plaintiff for making sex discrimination complaints against her, making any productive and amicable future working relationship between the plaintiff and Ms. Beckwith impossible, the plaintiff requests a judgment against the defendant for front pay in the amount of \$45,760 for the plaintiff's future monetary losses.

Wherefore, the defendant's unlawful discriminatory practices were carried out with malice and reckless indifference to the plaintiff's federally protected rights, the plaintiff requests judgment against the defendant for punitive damages in the amount of \$200,000.

Wherefore, the defendant's unlawful employment practices have caused the plaintiff to make this complaint, the plaintiff requests judgment for all court fees and costs that may arise from this complaint.

The plaintiff demands a trial by jury.



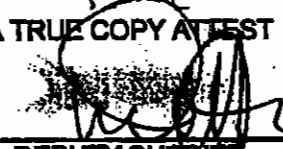
David L. Fish Jr. Pro Se
63 Harriette Road
E. Falmouth, MA 02536
(508) 540-6014

(TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED: CONTRACT TORT
MOTOR VEHICLE TORT EQUITABLE RELIEF OTHER)

BARNSTABLE, ss.

Commonwealth of Massachusetts

A TRUE COPY ATTEST


DEPUTY SHERIFF

SUPERIOR COURT
No. 05-382

David L. Fish Jr.

VS.

Marine Biological Laboratory

SUMMONS

To the above-named defendant, :

You are hereby summoned and required to serve upon

David L. Fish Jr.

Pro Se

plaintiff's attorney, whose address is

63 Harriett Rd. E. Falmouth, MA 02536

, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Barnstable either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness,

BARBARA J. ROUSE

Esquire, at Barnstable, the

Twelfth

day of

July

, in the year of our Lord two thousand and

Five

 Clerk

NOTE: When more than one defendant is involved, the names of all defendants shall appear in the caption. If a separate summons is issued for each defendant, each should be addressed to the particular defendant.

NOTICE TO DEFENDANT

You need not appear personally in court to answer the complaint but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's office.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on _____, 20____, I served a copy of the within summons, together with a copy of the complaint in this action, upon the within-named defendant _____, in the following manner (see Mass. R. Civ. P. 4 (d) (1-5):

Dated: _____, 20____

N. B. TO PROCESS SERVER:

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

David L. Fish, Jr.

(b) County of Residence of First Listed Plaintiff Barnstable
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

David L. Fish, Jr. (Pro Se)
63 Harriett Road, E. Falmouth, MA 02536

DEFENDANTS

Marine Biological Laboratory

County of Residence of First Listed Defendant Barnstable
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Jonathan D. Rosenfeld, Julie Murphy Clinton, Wilmer Cutler
Pickering Hale and Dorr LLP, 60 State Street, Boston, MA 02109

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) SOCIAL SECURITY <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Title VII of the Civil Rights Act of 1964 and 29 U.S.C. 206(d) (Federal Equal Pay Act)
 Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) David L. Fish, Jr. v. Marine Biological Laboratory
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Jonathan D. Rosenfeld, Esq., Julie Murphy Clinton, Esq.ADDRESS Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, MA 02109TELEPHONE NO. (617) 526-6000